IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4184 of 2000

The President,
Karad Nagar Parishad & anr. Petitioners
Vs.
Udaysingh B. Mohite & ors. Respondents

Mr. A. V. Bukhari with Mr.N.V. Bandiwadekar for petitioners.

Mr.S.S.Pakale for Resp.no.1.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 18, 2006.

P.C.

1. Heard Mr.Bukhari with Mr.Bandiwadekar, the learned counsel for the petitioners and Mr.Pakale, the learned counsel for the respondent no.1 - workman. The first petitioner is the President of Karad Nagar Parishad (Municipal Council) and the second petitioner is its Chief Executive Officer.

2. About 51 complaints came to be filed before the Industrial Court at Kolhapur in the year 1999 under Section 28 read with Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 by individual workmen praying for a relief that they be declared as the employees of the Municipal council for whom they were working through the contractor who

was impleaded as Respondent No.3 in the complaints and it was alleged that the so called contract was sham, bogus, fabricated and an artificial employer-employee relationship was created by the Municipality. The Municipality by filing its written statement had opposed all these complaints pointing out that as per the policy decision taken by the State Government the collection of octroi was contracted out in the year 1995 onwards and all the complainants were engaged through contractors who were assigned the contract of collection of octroi and in the absence of employer-employee relationship the complaints were not maintainable. It was also pointed out that they were employed through four different contractors viz. Rajendra Rainak, Mr. Ananda G. Pawar, Mrs. Madhuri Dilip Deshmukh and Mr.Dilip D.Deshmukh. It was further claimed that the tenders were invited in each year for collection of octroi and in the first year the contract was given to R.S.Rainak, in the second year it was given to A.G.Pawar, in the third year it was given to Mrs. Madhuri D. Deshmukh and in the fourth year i.e. from 1st September 1998 to 30th April 1999 it was given to Mr.Dilip Deshmukh. The Municipal Council claimed that it was issued a licence under the

Contract Labour (Regulation and Abolition) Act, 1970 on or about 17/2/1997 and similar licences were issued to the respective contractors as well in respect of the Municipal Council, Karad. It was also claimed by the Municipal Council that the wages / salaries were being paid by the respective contractors, attendance record was maintained by the contractors and there was no employer-employee relationship between the complainants and the Municipal Council. However, the learned Member of the Industrial Court allowed the complaints vide his judgment and order dated 30/6/2000. The said decision was challenged before this Court in Writ Petition No.4184 of 2000 and it was rejected. The Municipal Council, therefore, filed LPA No.319 of 2000 which was also dismissed in limine by a Division Bench of this Court on 18/11/2000. The Municipal Council, therefore, approached the Apex Court in Civil Appeal Nos.2417-2418 of 2001 and the Appeals were decided in terms of the following order:

> "On merits, we see that the parties on either side produced several documents before Industrial Court and these documents were not considered by the High Court at all and when a

serious question was agitated before the High Court, the matter should have been gone into in order to consider whether the finding recorded by the Tribunal can be said to be perverse or unreasonable. We are constrained to remit the matter to the High Court to re-hear the Writ Petition and dispose it on merits in accordance with law expeditiously. As the matter was also dealt with by the Division Bench in LPA, it is just and proper that the Writ Petition be heard by Division Bench of the Bombay High Court and disposed of expeditiously. As we are remitting the matter to the High Court, the High Court may also consider whether the contention as to maintainability should be permitted to be raised and if so, the legal principle decided by this Court in the aforementioned cases would have bearing on this case."

3. In the case of Steel Authority of India Ltd. & ors. v. National Union Waterfront Workers & ors. **[(2001) 7 SCC 1]**, the Constitution Bench has settled the legal position regarding the employer-employee relationship between the contract labour and the

principal employer within the meaning of the Contract Labour (Regulation and Abolition) Act, 1970 and it has been stated that to get the employer-employee relationship decided or to get the declaration made that the contract was bogus, sham or an artificial veil created by the principal employer, the employees concerned or the union representing them will have to approach the adjudicator under the Industrial Disputes Act, 1947 and get these issues decided by leading evidence in a reference made under Section 10 read with Section 12 of the said Act. The complaint under Section 28 of the MRTU & PULP Act, 1971 would be filed only by employees against the industrial establishment and if the respondent - employer disputes the relationship of employer and employee, the complaint of unfair labour practice under Section 28 of the MRTU & PULP Act, 1971 cannot lay before the Industrial Court against the principal employer and on the allegations that though they were employed through the contractor, the contract was sham, bogus and it was only a creation of the principal employer. All these issues can be properly considered by way of a reference under the Industrial Disputes Act and unless the issue of employer - employee relationship is decided in favour of the workmen, under such a

reference by the adjudicator under the Industrial Disputes Act, 1947 the complaint of unfair labour practice under Section 28 of the MRTU & PULP Act, 1971 cannot be entertained. We have been informed by Mr.Bukhari that another set of 40 contract labours had approached the very same Industrial Court by filing Complaint (ULP) Nos.111 to 155 of 2000 and the very same learned Member dismissed all these complaints as not maintainable vide his judgment and order dated 9/1/2003 and obviously by following the law laid down in the case of Steel Authority of India (Supra).

4. We have also been informed that pursuant to the Circular issued by the Municipal Administration Directorate, Government of Maharashtra on 16/3/2000, all the complainants came to be discontinued as contract labours and during the last about more than five years they are not in employment of the petitioner - Municipal Council and, therefore, there is no question of granting any protection to them as at present while disposing off this petition and relegating them to the remedy under the Industrial Disputes Act, 1947 for getting the employer - employee relationship adjudicated. Mr.Pakale, the

learned counsel for the original complainant on the other hand disputes this position. He submitted that inspite of the Writ Petition as well as the Letters Patent Appeal having been dismissed by this Court, it was not permissible for the Municipal Council to discontinue the complainants and it was certainly an act which was nothing short of contempt of this Court. On the other hand, the Municipality contends that the Government of Maharashtra vide circular dated 16/3/2000 directed the Municipality that the contract labour employed for collection of octroi was required to be discontinued and in compliance with the directions issued by the Government of Maharashtra the complainants were no more engaged as contract labours and, therefore, the complainants are not working for the petitioners during the last more than five years or so. Under these circumstances, we are satisfied that the prayer made by Mr.Pakale of granting reinstatement to the complainants as at present cannot be considered.

5. By following the law laid down in the case of Steel Authority of India (Supra) we allow this petition and quash and set aside the impugned judgment and order of the Industrial Court whereby

the complaints were allowed and the Municipal Council was directed to make the complainants permanent in its employment. The complainants may approach the conciliator under the Industrial Disputes Act, 1947 and if such an approach is made to the Assistant Labour Commissioner or Deputy Labour Commissioner, we direct the said officer to pass an order within a period of four weeks from such approach for making a reference to decide the issue of employer-employee relationship between the complainants and the Municipal Council. Needless to mention, after the reference is registered before the Industrial Tribunal / Labour Court for adjudication, the workmen or the Union representing them may apply for interim relief which will have to be considered in accordance with law. The impugned decision of the Industrial Court will not come in the way of the reference being decided on its own merits.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE